

1 *LAW OFFICE OF ROBERT LUBIN*
2 ROBERT M. LUBIN ESQ. (055863)
3 r1817@aol.com
4 JOSEPH CAMENZIND, IV (244154)
5 camenzindlaw@yahoo.com
6 177 Bovet Road, Suite 600
7 San Mateo, CA 94402
8 Telephone: (650) 638-2331
9 Fax: (650) 638-1005

7 *LAW OFFICE OF KENNETH PRITIKIN*
8 KENNETH PRITIKIN, ESQ. (108072)
9 kwpritikin@gmail.com
10 2950 Buskirk Avenue, Suite 300
11 Walnut Creek, CA 94597
12 Phone: (925) 407-2158
13 Fax: (925) 262-4688

14 Attorneys for the Plaintiffs

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA (SAN JOSE)

17 ROBERT PRITIKIN, et al.

18 Plaintiffs,

19 vs.

20 COMERICA BANK, et al.,

21 Defendants

Case No.: C09 03303 JF

**PLAINTIFFS' OBJECTION TO THE
REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF COMERICA BANK'S
MOTION TO DISMISS**

Date: October 30, 2009

Time: 9:00 a.m.

Dept.: Honorable Jeremy Fogel

22
23
24
25
26
27
28

PRITIKIN v. COMERICA BANK ET. AL.
PLAINTIFFS' OBJECTION TO REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF COMERICA

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE THAT Plaintiffs Robert Pritikin et al. ("Plaintiffs") hereby
3 object to all Exhibits attached to the Request for Judicial Notice in Support of Defendant
4 Comerica Bank's Motion to Dismiss the Complaint (hereinafter, the "Request for Judicial
5 Notice").

6 Plaintiffs' objection is based on the fact, discussed below, that all Exhibits attached to
7 the Request for Judicial Notice are irrelevant to the Motion to Dismiss. When a document is
8 irrelevant to the matter before the court, judicial notice of the document is not warranted.
9 *Turnacliiff v. Westly*, 546 F.3d 1113, 1120, fn. 4 (9th Cir. 2008); *Campo v. Kennedy*, 517 F.3d
10 1070, 1075, fn. 7 (9th Cir. 2008).

11 **1. The Exhibits are Irrelevant Because Plaintiffs Had No Due Diligence**
12 **Obligation to Investigate Public Records for Evidence of Comerica's**
13 **Misconduct**

14 The purported relevance of the Exhibits is that they allegedly demonstrate that there
15 was substantial publicly available information that put Plaintiffs on notice of their claims
16 against Comerica as early as 2004. Specifically, Comerica argues that Plaintiffs could have
17 learned of the essential elements of their claims against Comerica several years ago if Plaintiffs
18 had reviewed pleadings filed in the *Four Star* bankruptcy case and in lawsuits brought by
19 investors and creditors of Four Star Financial Services, LLC, and had reviewed publicly
20 available documents that had been filed in the *Four Star* bankruptcy case or maintained by the
21 bankruptcy trustee's accountants. *See* Motion at 3:19-22; 4:1-28; 5:1-19; 8:11 – 10:27; 16:1-5.

22 However, a plaintiff has no due diligence obligation to conduct any investigation of
23 publicly available facts which would support a claim against a defendant unless the plaintiff
24 first has reason to suspect that the defendant engaged in wrongdoing. *See Prudential Home*
25 *Mortg. Co. v. Superior Court* (1998) 66 Cal.App.4th 1236, 1248. In that regard, a plaintiff is
26 entitled to assume that a regulated business will not engage in conduct that would violate the
27 regulations which govern the business's operations. *Id.* Thus, in the absence of Plaintiffs'
28 actual knowledge of some fact that would have given Plaintiffs a reasonable basis for
suspecting that Comerica had engaged in wrongful conduct, Plaintiffs were entitled to assume

1 that Comerica had done nothing wrong, and Plaintiffs had no due diligence obligation to
2 conduct any investigation regarding potential claims against Comerica. *See* discussion in
3 Section IV.D.1. of Plaintiffs' Opposition to Comerica's Motion to Dismiss.

4 There is not a single fact alleged in the Complaint or cited by Comerica in its Request for
5 Judicial Notice that would allow the Court to conclude that Plaintiffs had any reason to suspect
6 that Comerica had engaged in any wrongful conduct. Therefore, Plaintiffs had no due diligence
7 obligation to conduct any investigation of publicly available information in search of evidence to
8 support their claims against Comerica.

9 As such, it is irrelevant whether such an investigation might have uncovered facts
10 supporting Plaintiffs' claims against Comerica.

11 **2. Even If Plaintiffs Had a Due Diligence Obligation to Investigate Public**
12 **Records for Evidence of Comerica's Misconduct, the Exhibits are**
13 **Irrelevant Because They Contain No Facts to Suggest that Plaintiffs Had**
Claims Against Comerica

14 The statute of limitations on Plaintiffs' claims against Comerica did not run so long as
15 Plaintiffs could not, by the exercise of reasonable diligence, acquire essential information
16 bearing on the claims. *See* discussion in Section IV.A. of Plaintiffs' Opposition to Comerica's
17 Motion to Dismiss.

18 The Exhibits attached to the Request for Judicial Notice do not supply any essential
19 information in support of Plaintiffs' claims. In fact, there is not a single fact contained in any of
20 the Exhibits that would direct any reasonable suspicion towards Comerica. *See* discussion in
21 Section IV.D.2. of Plaintiffs' Opposition to Comerica's Motion to Dismiss. Therefore, even if
22 Plaintiffs were charged with constructive knowledge of the contents of the Exhibits, that
23 knowledge would not have supplied Plaintiffs with the essential information supporting any claim
24 against Comerica, which is the standard that must be met in order for the statute of limitations on
25 Plaintiffs' claims against Comerica to begin running.

26 ///

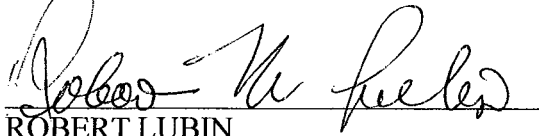
27 ///

28 ///

1 As such, the Exhibits are irrelevant for the purpose for which they have been offered.

2
3 DATED: October 8, 2009

4 LAW OFFICE OF ROBERT M. LUBIN
5 LAW OFFICE OF KENNETH PRITIKIN

6 
7

8 ROBERT LUBIN

9 KENNETH PRITIKIN

10 JOSEPH CAMENZIND, IV

11 Attorneys for the Plaintiffs.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28